

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

TIMOTHY GREEN, Register No. 509735,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 08-4047-CV-C-NKL
	)	
DAVE DORMIRE, et al.,	)	
	)	
Defendants.	)	

**ORDER**

On January 27, 2009, United States Magistrate Judge William A. Knox recommended that (1) plaintiff's motions for judgment on the pleadings be denied; (2) the motions to dismiss of defendants be granted, in part, and denied, in part; (3) the motions to dismiss filed by defendants Dave Dormire, Arthur Wood, Bill Galloway, Debra Lewis, Dr. Loehr, Kay Smith, Dr. Felix Vincenz and Dr. Rawlani be granted and plaintiff's claims against them be dismissed for failure to state a claim; and (4) the motions to dismiss filed by defendants Mariann Atwell, Dr. Anasseril Daniel, Jerry Doty, Ellis McSwain, Stephanie Scott, and Bruce Harry be denied. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on February 13, 2009. The recommendation of the Magistrate Judge is adopted, in part.

This court agrees with the analysis in the report and recommendation which concludes that plaintiff's claims that defendants Atwell, Daniel, Doty, McSwain, Scott and Harry violated his rights by involuntarily medicating him should proceed, and his claims against defendants Lewis, Loehr, Smith and Rawlani be dismissed for failure to state a claim.

Upon review of Vitek v. Jones, 445 U.S. 480, 491 (1990), and Sandin v. Conner, 515 U.S. 472, 484, 493 (1995), plaintiff will also be allowed to proceed on his claims that he was denied due process when transferred to Fulton State Hospital (hereinafter "FSH") (a mental health institution), and was improperly held at FSH for 33 days without the necessary court order

required by state law. In Sandin v. Conner, 515 U.S. at 484, 493, the Supreme Court upheld the holding of Vitek, finding that transfer to a mental hospital exceeds a prisoner's sentence in an unexpected manner to give rise to due process in its own force. Plaintiff's objections to the Report and Recommendation assert defendants Dormire, Woods and Galloway of Jefferson City Correctional Center, and defendant Felix Vincenz of FSH are the defendants responsible for his transfer and subsequent 33-day commitment to FSH, in violation of his due process rights. Plaintiff's objections on this one particular issue will be treated as an amendment to his complaint.

The remainder of issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation and the court is persuaded that the recommendation of the Magistrate Judge on those issues is correct and should be adopted.

Plaintiff's request for additional assistance beyond that already provided by defendants to obtain the addresses of defendants for service of process is denied. Defendants have already, to the extent available, provided the last-known addresses for named defendants not yet served. Defendants are not required to conduct further investigation into obtaining addresses of unserved defendants. The court notes that plaintiff lists thirty defendants, twenty of whom have already waived service of process or been served. It is plaintiff's responsibility to furnish the information necessary to identify the defendants and enable the United States Marshal to serve process. Moore v. Jackson, 123 F.3d 1082 (8th Cir. 1997).

IT IS, THEREFORE, ORDERED that plaintiff's request for an order of additional assistance from defendants for service of process is denied. [98] It is further

ORDERED that plaintiff's objections, to the extent they make allegations that Dormire, Woods, Galloway and Vincenz are directly responsible for plaintiff's denial of due process in transfer and commitment to Fulton State Hospital, are treated as a motion to amend, and is granted. [98] It is further

ORDERED that the Report and Recommendation of January 27, 2009, is adopted as set out herein. [92] It is further

ORDERED that plaintiff's motions for judgment on the pleadings are denied. [57, 59, 60] It is further

ORDERED that defendants' motions to dismiss are granted, in part, and denied, in part.  
[38, 45, 53] It is further

ORDERED that motions to dismiss as to defendants Debra Lewis, Dr. Loehr, Kay Smith, and Dr. Rawlani are granted and plaintiff's claims against these defendants are dismissed. It is further

ORDERED that the motions to dismiss as to defendants Mariann Atwell, Dr. Anasseril Daniel, Jerry Doty, Ellis McSwain, Stephanie Scott, and Bruce Harry are denied. It is further

ORDERED that the motions to dismiss as to defendants Dave Dormire, Arthur Wood, Bill Galloway and Dr. Felix Vincenz are denied on plaintiff's claims challenging his transfer and commitment to Fulton State Hospital as a violation of his due process rights, and granted as to all further claims.

/s/ \_\_\_\_\_

NANETTE K. LAUGHREY  
United States District Judge

Dated: March 26, 2009  
Jefferson City, Missouri